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ADMINISTRATIVE INSTRUCTION MOJ - NO. 16/2024
ON THE PROCEDURE AND PRONUNCIATION OF DISCIPLINARY MEASURES
FOR THE STAFF OF KOSOVO CORRECTIONAL SERVICE¹

¹ Administrative Instruction Moj-No.16/2024 on the Procedure and Pronunciation of Disciplinary Measures for the Staff of Kosovo Correctional Service, signed by the Minister of the Ministry of Justice on: 13.12.2024, with Decision No. 434/2024 of 16.12.2024

Minister of the Ministry of Justice

Pursant to Article 59 (paragraph 3) of Law No. 08/L-131 for the Correctional Service of Kosovo, in accordance with Article 11 (paragraph 1, under paragraph 1.5) of Law No. 08/L117 on the Government of the Republic of Kosovo, as well as in accordance with Article 9 (paragraph 2) of the Regulation (GRK) - No. 17/2024 of the Work of the Government of the Republic of Kosovo,

Issues:

ADMINISTRATIVE INSTRUCTION MOJ - NO. 16/2024 ON THE PROCEDURE AND PRONUNCIATION OF DISCIPLINARY MEASURES FOR THE STAFF OF THE KOSOVO CORRECTIONAL SERVICE

Article 1 The purpose

This Administrative Instruction aims to regulate the procedures and pronounce disciplinary measures for the personnel of the Kosovo Correctional Service (in the text we add: KCK).

Article 2 Scope

The provisions of this Administrative Instruction apply to the personnel in all institutions and other units within the Kosovo Correctional Service.

Article 3 Disciplinary Responsibility

1. KCK personnel bear disciplinary responsibility for violation of duties and responsibilities, in cases where they do not perform the duties assigned to them, when they improperly implement them, or when during their exercise they act in violation of the Constitution, laws and other by-laws in force. Disciplinary violation can be done by action or inaction.
2. Criminal responsibility does not exclude disciplinary responsibility, if the cause of the criminal report also constitutes a violation of work duties or responsibilities.
3. Exemption from criminal responsibility does not mean exemption from disciplinary responsibility, if the offense committed represents a violation of work duties or responsibilities.

Article 4 Violations of duties and responsibilities

1. Violations of work duties and responsibilities are:

- 1.1. minor offenses;

1.2. serious violations.

2. Light and serious violations are considered those violations that are defined in the relevant Law on Public Officials.

Article 5

Special disciplinary violations for the personnel of the Correctional Service of Kosovo

1. In addition to the disciplinary violations provided for in the Law on Public Officials, the personnel of the Kosovo Correctional Service are also responsible for violations of special duties and responsibilities provided for in the relevant Law on the Kosovo Correctional Service.

2. Minor violations of special duties and responsibilities are:

2.1. is rude or insulting in words or actions, towards prisoners, other employees and the public, while on duty or in circumstances related to his duties;

2.2. engages in political activities that adversely affect the impartial performance of his duties;

2.3. out of procedure engages a prisoner to perform any work or provide any service without obtaining permission from his supervisor;

2.4. failure to regularly maintain documents and official data related to the workplace;

2.5. leaving the workplace without authorization;

2.6. two (2) unexcused absences within the year.

3. Serious violations of special duties and responsibilities are:

3.1. theft, fraud, forgery of official documents;

3.2. property damage;

3.3. coming to work under the influence of alcohol or narcotic substances, or using them during working hours;

3.4. serious violations of safety rules;

3.5. disclosure of confidential data or information;

3.6. makes public statements about the Correctional Service, without the authorization of the General Director;

3.7. uses his title or authority in an unauthorized manner for personal gain;

3.8. provides information about prisoners without authorization;

3.9. sexual harassment of any inmate, employee or visitor;

- 3.10. discrimination in any form or ill-treatment directly or indirectly against prisoners, officials or other employees;
- 3.11. failure to act or neglect his duty as a correctional officer;
- 3.12. failure to act in accordance with the law, by-laws and internal work rules;
- 3.13. knowingly or negligently issues or signs a false statement regarding the fulfillment of the duty;
- 3.14. being responsible, or a person in authority, ignores or does not take measures when an employee violates work rules and duties;
- 3.15. fails to report to higher authorities any contraband it discovers on any employee, inmate or other member of the public;
- 3.16. negligently endangers or causes physical harm or death to any prisoner, other employee of the Service or another person, directly or indirectly;
- 3.17. use force which is not limited in its intensity and duration to the extent necessary to achieve the legitimate objective;
- 3.18. use the means for the use of force contrary to the law and the rules of the Correctional Service;
- 3.19. permits or enables the escape of any prisoner;
- 3.20. fails to take appropriate action when an inmate violates internal rules, attacks a worker, another inmate, or members of the public;
- 3.21. fails to account, misappropriates, and misuses public money and property or the money/property of any other person that falls into his hands while performing his duties;
- 3.22. sleep during working hours;
- 3.23. forces, incites or tries under any circumstances to force another employee to participate in illegal or unauthorized work, or in violation of professional ethics standards;
- 3.24. does not immediately report an incident to the institution;
- 3.25. fights with other employees of the Service or any other member of the public while on duty;
- 3.26. brings contraband or unauthorized items into or out of the prison;
- 3.27. does not report to competent officials, cases of mistreatment of prisoners by other workers;

3.28. does not report and does not take measures against violations by prisoners, in accordance with legal provisions;

3.29. conceals, withholds, ignores, damages or destroys any complaint or report made against any official or prisoner;

3.30. misuse of the official weapon or its loss.

Article 6

Initiation of the disciplinary procedure

1. The disciplinary procedure includes all the administrative activity that is carried out from the beginning of the procedure to the taking of a decision in the disciplinary procedure.

2. The disciplinary procedure begins on the basis of reasonable suspicion of the violation of duties and work responsibilities from the personnel of the KCS. Information received anonymously, together with other evidence, may serve to create a reasonable suspicion for the initiation of disciplinary proceedings.

3. The direct supervisor is obliged to initiate the disciplinary procedure for minor violations of work duties and responsibilities by the employee.

4. The disciplinary commission begins the procedure for serious violations of the duties and responsibilities of work:

4.1. at the request of the employee's direct supervisor;

4.2. based on the findings and/or recommendations of any other public body or unit powers of administrative control, financial inspection or audit, or of any other official within the institution, as well as at the request of the citizen;

4.3. at the initiative of any member of the commission, on the basis of reasonable suspicion of committing a disciplinary violation.

5. The disciplinary procedure begins without delay but no later than within two (2) years from the date of committing the minor violation and no later than five (5) years from the date of committing the serious violation.

6. If there is reason to believe that the continuation of the exercise of duty by the employee, against whom a disciplinary procedure has been initiated, hinders the disciplinary investigation or may affect the exercise of appropriate for his duty, the disciplinary commission may decide the temporary suspension of the employee or take any other appropriate measure, until the final decision is made.

7. The decision on suspension according to paragraph 6 of this article is an intermediate procedural action against which no appeal is allowed.

Article 7
Representation of violations of work duties and responsibilities

1. Employees of the institution, when they are aware of or suspect a violation of duties and responsibilities of the work, performed by other employees of the KCS, must report it in writing to the direct supervisor of the employee who is alleged to have committed the violation.
2. When the violations are presented by citizens or institutions outside the structures of the institution where the civil servant who is alleged to have committed the violation is a member, they are officially reported to the relevant institution.
3. The notification submitted to the institution, according to paragraph 2 of this article, is sent without delay to the disciplinary commission of the relevant institution.
4. If the notification received does not contain elements that can be classified as a disciplinary violation, the direct supervisor decides not to start the disciplinary procedure, giving a written reason for not starting the procedure, and for this he notifies the submitter of the alleged violation through formal notification as defined by the Law on General Administrative Procedure.

Article 8
Power to impose disciplinary measures for minor violations

The direct supervisor and/or the highest Administrative Leader can pronounce the disciplinary measure for a slight violation of work duties defined in the relevant provisions of the law on public officials and the relevant law on the KCS.

Article 9
Power to impose disciplinary measures for serious violations

The Disciplinary Commission can pronounce the Disciplinary Measure for a serious violation of work duties defined in the relevant provisions of the law on public officials and the relevant law on of KCS.

Article 10
Establishment and composition of the disciplinary commission

1. The General Director establishes the disciplinary commission at the level of the Kosovo Correctional Service, for the imposition of disciplinary measures in case of serious disciplinary violations.
2. The Disciplinary Commission consists of three (3) members, including one (1) representative of the Human Resources Management unit, and the commission must include at least one (1) lawyer.
3. With the exception of paragraph 2 of this article, the powers of the disciplinary commission for high-level management categories are exercised by the State Evaluation and Discipline Commission in accordance with the relevant provisions of the Law on Public Officials.

4. The Disciplinary Commission provided for in paragraph 1 of this article has a mandate of two (2) years.
5. In case the disciplinary procedure is started for one of the members of the disciplinary commission, the Highest Administrative Leader issues a decision to replace the member of the disciplinary commission with another employee of the same functional category.
6. In case the chairman or the members of the disciplinary commission have a conflict of interest or when the conflict of interest appears in the meantime, they are replaced by the highest administrative leader of the institution for the following cases:
 - 6.1. when the chairman or member of the commission is in the position of direct supervisor of the suspected offender or vice versa;
 - 6.2. when the chairman or member of the commission was harmed by the suspected offender;
 - 6.3. when the chairman or member of the commission with the suspected offender contradicts the provisions of the Law on General Administrative Procedure, for cases of exclusion from the procedure.
7. The provisions of the Law on General Administrative Procedure apply to the decision-making of the disciplinary commission.

Article 11 **Session of the Disciplinary Commission**

1. The disciplinary commission immediately begins examining the facts and evidence in the disciplinary procedure after accepting the request for initiation of the disciplinary procedure.
2. The commission evaluates the facts and circumstances of the event that are necessary for making the decision.
3. The disciplinary commission also performs the following actions until the decision is made:
 - 3.1. interrogates or obtains statements from witnesses and verifies facts;
 - 3.2. reviews relevant documentation;
 - 3.3. invites the initiator and the civil servant against whom the disciplinary procedure has been initiated to familiarize themselves with their version of the event or problem;
 - 3.4. performs any other action necessary to verify the event.
4. The administrative disciplinary procedure guarantees the employee's right to be notified about the start of the procedure, to be informed about the alleged factual violation and the evidence for its commission, the right to be heard, to present evidence, the right to have access to documents related to the procedure, for legal protection, the right to be assisted, as well as the right to appeal against the final decision.

5. Sessions of the Disciplinary Commission are closed unless otherwise provided by the Law in force and are held with the physical presence of all members as determined by the provisions of the Law on General Administrative Procedure.
6. The procedure and decision-making takes place in accordance with the relevant law on administrative procedure.
7. The Commission must make a decision within forty-five (45) days after receiving the request for initiation of the disciplinary procedure
8. The Commission's decision is submitted to the civil servant and the relevant Human Resources Division, and a copy of the decision becomes part of the employee's personal file.

Article 12

Special disciplinary measures

1. The special disciplinary measures that can be imposed on the personnel of the Correctional Service of Kosovo are:

- 1.1. remarks;
- 1.2. withholding from twenty percent (20%) to forty percent (40%) of the salary for a period of up to six (6) months;
- 1.3. transfer to another correctional institution for up to six (6) months;
- 1.4. the prohibition of promotion, including the increase in the salary scale for a period of two (2) to five (5) years;
- 1.5. decrease in position;
- 1.6. leaving the civil service.

Article 13

Pronunciation of disciplinary measures

1. Competent for the imposition of disciplinary measures according to this administrative instruction are:

- 1.1. direct supervisor and/or senior administrative manager;
- 1.2. disciplinary commission.

2. The direct supervisor and/or the higher administrative leader pronounces the disciplinary measure defined in the relevant provisions of the Law on Public Officials and the relevant law on the KCS.

3. The disciplinary committee pronounces the disciplinary measures defined in the relevant provisions of the law on public officials and the relevant law on the SKK.

Article 14

Principles of individualization of disciplinary measures

1. To determine the disciplinary measure, the direct supervisor and/or the highest administrative leader or the disciplinary commission is based on:

1.1. the causes, circumstances of committing the violation, its significance and consequences;

1.2. degree of guilt;

1.3. the existence of other outstanding previous disciplinary measures;

1.4. the employee's previous efforts to avoid or limit the damage.

2. Disciplinary measures are pronounced in direct proportion to the offense committed.

Article 15

Prescription of disciplinary measures

1. Disciplinary measures noted in the personnel file are prescribed according to the deadlines stipulated in article 62 paragraph 1 under paragraph 1.1 to 1.7 of the Law on Public Officials.

2. The declaration of the prescription of the disciplinary measure is made according to the official duty, or at the request of the employee who has been imposed a disciplinary measure by the decision of the human resources unit of the institution.

Article 16

Administrative services for Commission

1. The human resources unit serves as the secretary for the commission and has the following responsibilities:

1.1. providing administrative assistance, logistical support, as well as other necessary assistance;

1.2. preparation of committee sessions;

1.3. informing the members of the commission and the parties, regarding the assigned sessions;

1.4. keeps minutes and distributes the decision taken during sessions and meetings;

1.5. the materials to be examined were distributed to the members of the commission in time;

- 1.6. notifies the decisions taken by the commission to the parties;
- 1.7. keeps files of minutes and decisions taken by the commission;
- 1.8. provides procedural guidance to committee members;
- 1.9. performs other tasks requested by the chairman of the committee.

Article 17
Right of Appeal

Any civil servant in accordance with Article 27 paragraph 3 of the Law on Public Officials may submit a complaint to the Independent Supervisory Council of the Civil Service of Kosovo within a period of thirty (30) days from the date of notification of the decision on the disciplinary measure, while administrative and support employees can submit a complaint to the Complaints Commission of the SC.

Article 19
Disciplinary commission for support and administrative employees

The commission established according to Article 10 of this administrative instruction is also competent for the disciplinary procedure of administrative support officers employed in the Kosovo Correctional Service.

Article 20
Entry into force

This Administrative Instruction shall enter into force seven (7) days after publication in the Official Gazette of the Republic of Kosovo.

Albulena Haxhiu

Minister of Justice

13/12/2024